



February 8, 2021

The Honorable Paul G. Pinsky, Chair  
Senate Education, Health and Environmental Affairs  
2 West, Miller Senate Office Building  
Annapolis, MD 21401

**Oppose: SB 528 – Coast Smart Siting and Design**

Dear Chair, Pinsky and Committee Members:

The NAIOP Maryland Chapters represent 700 companies that develop and own of commercial, mixed-use, and light industrial real estate, including some of the largest property owners in the state. NAIOP's membership is comprised of a mix of local firms and publicly traded real estate investment trusts that are invested in the future of Maryland but also have experience in national and international markets. Climate resiliency and mitigation are built into the everyday operation and future investment decisions of commercial real estate companies. Ensuring that construction and reconstruction in and adjacent to flood hazard areas adapts to changing conditions is a critical component of protecting public and private assets.

SB 528 would establish state-wide minimum freeboard [building elevation] requirements and require that private construction projects follow construction guidelines and administrative procedures for project applications, review, exemptions, waivers that were developed by the Coast Smart Council for use in state and local infrastructure projects. Decisions about changes to construction in and adjacent to flood prone areas are best within the existing federal, state, and local floodplain management structure and implemented by local code administrators using the framework of national construction standards developed by the International Building Code Council and American Society of Civil Engineers and FEMA. NAIOP is extremely concerned that differences between the Coast Smart guidelines and existing local requirements will create bureaucratic inconsistency, and confusion resulting in major problems for property owners.

The Maryland Building Performance Standards are the state-wide building codes. Provisions of the *International Building Code Appendix G Flood-Resistant Construction* and the design standards of American Society of Civil Engineers *24 Flood-Resistant Design and Construction* set out specific requirements for siting and design of buildings and private development. These tools are written to coordinate with FEMA flood plain maps and MDE's model floodplain ordinances. Local floodplain managers, building officials and designers follow as they make decision about permits in and adjacent to flood prone areas. Management of Maryland's floodplain and building codes are delegated to local governments with specific requirements about the administrative duties and powers of the floodplain administrator and building code official. Among those local functions are:

- Adopting floodplain maps, identifying flood hazard areas and design flood elevations
- Determination of substantial improvement and substantial damage
- Evaluating and approving the content of site plans, construction documents and conducting site inspections

SB 528 would require private construction projects adhere to the Coast Smart Council's Construction Program which is administered by the Coast Smart Council and the Smart Growth Subcabinet. Neither the Coast Smart Council nor the Smart Growth Subcabinet have the regulatory authority or administrative capacity to scale up and regulate private construction. Applicants are directed to meet with the Council for pre-construction meetings where questions of scoping and necessary compliance options would ordinarily be discussed. The Categorical Exemptions [pg. 12 of the Program Criteria] are self-activating by the applicant. Waivers [pg. 13 of the Program Criteria] are reviewed by the Governor's Smart Growth Subcabinet using a standard of review [pg. 21 of the Program Criteria] developed for state infrastructure projects that differs from local floodplain ordinances.

The bill contains provisions for delegation of authority to local governments which we find lacking for several reasons. First, the language does not require local governments to manage the program. It is essentially providing the opportunity for the willing to

opt-in. In locations where delegation does not take place property owners will have no local support when trying to understand what is required of them and how to design a compliant structure. Second, even under delegated authority the Coast Smart Council construction criteria would displace local code-based standards with the Coast Smart Criteria which was written for state infrastructure projects and is not well suited to private development and construction.

The new provisions would be applied under the footprint of the Climate Ready Action Boundary map. [CRAB Map] The methodology used to create the CRAB Map differs from existing floodplain mapping resulting in new, generally higher, flood elevations and a significant upland expansion beyond existing floodplain boundaries. In the slide below the solid-colored areas are locations outside of the floodplain that fall under the footprint of the CRAB Map. A preliminary GIS analysis conducted for NAIOP calculated that the CRAB Map contains 246,153 acres that are outside of the current FEMA floodplain maps.



The CRAB Map represents major changes to flood elevations and minimum building elevations. If you decide current requirements are insufficient to ensure long term resiliency and it is necessary to increase freeboard, we ask that you implement those changes locally through the codes process so they can be effectively administered and integrated into local floodplain management ordinances and the state building code.

This way flood hazard and upland areas in the same project can be reviewed and regulated efficiently. The administrative capacity of the local code official can be available to make determinations of substantial improvements, identify flood hazard areas, design elevations and evaluate variance requests.

Sincerely,

Tom Ballentine, Vice President for Policy  
 NAIOP Maryland Chapters -The Association for Commercial Real Estate

cc: Senate EHEA Committee Members  
 Nick Manis – Manis, Canning Assoc.

NAIOP's review of the Coast Smart Criteria raised numerous concerns and questions. Some are objections to individual requirements; some are related to our concern that the Council has no regulatory or administrative capacity to scale up to cover private construction. For example:

1. Project Certification – Current criteria require a pre-construction certification that is signed by the applicant. How will that apply to private construction projects?
2. Avoidance – *“Construction and reconstruction shall be avoided, to the fullest extent practicable, within areas likely to be inundated by sea level rise within the next 50 years.”* How can an accurate 50-year assessment be made?
3. Waiver Criteria – Coast Smart waiver criteria differ significantly from the criteria in MDE's model floodplain management ordinance as well as National Flood Insurance Program guidance on granting a variance from flood plain regulations. These differences are related to both the legal standard review and the factors considered, some of which do not apply to private construction.
4. Waiver Process – Coast Smart waivers are reviewed and decided by the Governor's Smart Growth Subcabinet. Applicants are instructed to write, a no more than, two-page letter explaining the request for waiver. Applicants are advised to allow up to 8 weeks for a response.
5. Self-Determined Exemptions – The criteria allow agencies to determine and approve their own exemption for seven categorical exceptions. We question the appropriateness of this provision.
6. Consultation & Advice – “Using Agencies” may request a pre-construction meeting with the Coast Smart Council to review a project. The council meets only 4 times per year.
7. Application “wherever practicable” – *“Projects not subject to comply with the Program requirements..shall employ Coast Smart principles and practices, wherever practicable.”*
8. Natural Features – *“Natural and nature-based features that may serve to buffer the project from the impacts of future sea level rise, coastal flooding or storm surge or that support general climate adaptation shall be identified and should be protected and maintained to the maximum extent practicable.”* This element may be met through forest conservation requirements, but it confuses the jurisdictional review.
9. Critical Area Commission Compliance – *“All projects shall be in compliance with Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.”*
10. Determination of Freeboard – *“Non-critical”* Structures in Flood Hazard Areas shall be constructed with “a minimum” 2-feet above 100yr flood. *“Critical and essential”* projects require 3-feet of freeboard. What uses are critical and non-critical, who makes this determination?
11. Applies to Project Life Cycle – *“Coast Smart” includes both siting and design guidelines that are applicable throughout the entire life cycle of a project.”*